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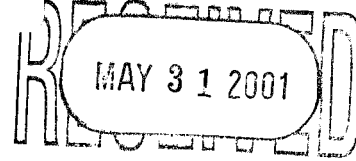
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CATIONARIZONA CORPORATION
COMMISSION

Director of Utilities

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May 29, 2001

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VIA OVERNIGHT DELIVERY

Utilities Division

██████████
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

T-03911A-01-0448

Re: **Application of Touch America Services, Inc.
For a Waiver of Public Utility Holding Companies
and Affiliated Interests Rules**

Ladies and Gentlemen:

On behalf of Touch America Services, Inc. ("TASI") we hereby transmit an original and ten (10) copies of its application for an expedited Waiver of the Affiliated Interests Rules for competitive interexchange telecommunications service providers.

Pursuant to A.A.C. R14-2-806, TASI applies for a permanent general waiver of the Corporation Commission's Application for Waiver of Affiliated Interests Rules for its competitive interexchange telecommunications services. In the alternative, TASI requests a partial waiver of the Rules. As outlined in the attached pleadings, TASI believes the filings requirements will be unnecessary and unduly burdensome to both TASI and the Commission.

An extra copy of this letter, cover sheet and filing is enclosed to be date-stamped and returned to the undersigned in the pre-addressed, postage-paid envelope provided. Should any questions arise, kindly contact the undersigned.

Respectfully submitted,

Paul A. Dean
Regulatory Counsel

Enclosures

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK

CHAIRMAN

JIM IRVIN

COMMISSIONER

WILLIAM A. MUNDELL

COMMISSIONER

IN THE MATTER OF THE APPLICATION } Docket No. T-03911A-01-0303
OF TOUCH AMERICA SERVICES, INC. }
FOR A WAIVER OF PUBLIC UTILITY }
HOLDING COMPANIES AND AFFILIATED }
INTERESTS RULES (A.A.C. R14-2-801 et seq.) }

APPLICATION OF TOUCH AMERICA SERVICES, INC.
FOR A WAIVER OF PUBLIC UTILITY HOLDING
COMPANIES AND AFFILIATED INTERESTS RULES
(A.A.C R14--2-801 et seq.)

Pursuant to A.A.C. R14-2-806, Touch America Services, ("TAS1") a Delaware corporation, hereby applies for a permanent general waiver of the Commission's Application for Waiver of Affiliated Interests Rules. A.A.C. R14-2-801 to R14-2-806 (the "Rules"). In the alternative, Touch America Services seeks a partial waiver of the Rules that is consistent with Touch America Services operation as a interexchange facilities-based telecommunications services provider in Arizona.¹

INTRODUCTION

¹By seeking this waiver, Touch America Services does not waive any federal constitutional arguments concerning the applicability of the Rules to particular transactions or operations.

Based on its operational revenues over the past year, Touch America Services believes it may now (or soon will) be considered a Class A utility and, therefore, subject to the Rules. The Rules regulate the formation of public utility holding companies and certain transactions and activities between public service corporations and their affiliated interests. According to the Commission in promulgating the Rules, the Rules are intended to: (i) prevent the commingling of utility and non-utility funds; (ii) prohibit cross-subsidization of non-utility activities by utility ratepayers; (iii) prevent negative impact of non-utility activities on a utility's financial credit; and (iv) ensure that the utility and its affiliates provide the Commission with the information necessary to "carry out its regulatory responsibilities." See Decision No. 56618.

Touch America Services respectfully submits that in light of the stated purposes, Touch America Services should be wholly (or partially) exempt from requirements of the Rules. As explained below, Touch America Services operates in a highly competitive environment that, in conjunction with the Commission's existing regulatory measures, already effectively protects customers from cross-subsidization or other activities that could detrimentally affect service to customers. Moreover, because Touch America Services' Arizona operations represents such a small percentage of the total revenue and investment of the company and its subsidiaries, application of the Rules to Touch America Services would be unreasonably costly and burdensome. Finally, a waiver of these Rules will in no way diminish the Commission's ability and authority to effectively regulate Touch America Services as appropriate in a competitive market. Therefore, Touch America Services respectfully requests that the Commission grant it a permanent general waiver of the Rules. Alternatively, Touch America requests a partial waiver of the Rules that is appropriate for its operation as a interexchange facilities-based

telecommunications services provider in Arizona. Another alternative would be a waiver of the rules as they would apply to Touch America for the pro forma transaction described below.

BACKGROUND

A. Touch America Services

The Arizona Corporation Commission ("Commission") granted Touch America Services a Certificate of Convenience and Necessity ("CC&N") to operate as a facilities-based interexchange telecommunications services and alternative operator services provider in Arizona.

Touch America Services is a Delaware corporation incorporated on January 5, 2000 under the name TeleDistance, Inc. ("TeleDistance"). TeleDistance changed its name to Touch America Services on June 8, 2000. The Arizona Corporation Commission approved the name change and issued Touch America Services a certificate of authority to conduct business as a foreign corporation in Arizona. Subsequently, TeleDistance filed an application with the Commission to change the name on its CC&N to reflect the name change.

Touch America Services (f.k.a. TeleDistance) was formed by Qwest Communications International Inc. ("Qwest") to facilitate the federally-mandated divestiture of its interLATA customers and assets in the 14-state former US WEST, Inc. ("US WEST") service territory ("in-region") ("Divestiture") prior to its merger with US WEST. The Divestiture followed a two-step process, as follows: 1) Qwest transferred the in-region, interLATA customers and assets of its operating company subsidiaries (Qwest Communications Corporation, LCI International Telecom, Inc., Phoenix Network, Inc. and USLD Communications, Inc.) to TeleDistance; and 2) TeleDistance changed its name to Touch America Services and was then sold by Qwest to Touch America, Inc. on June 30, 2000.

B. Touch America

Touch America is a Montana corporation incorporated on July 13, 1983. Touch America is authorized by the Arizona Corporation Commission to conduct business as a foreign corporation and is in good standing.

Since its acquisition of Touch America Services on June 30, 2000 Touch America has been serving Arizona customers transferred from Qwest through its subsidiary, Touch America Services. As more fully described below, Touch America is a full service long distance telecommunications company with near nationwide operations.

As part of its agreement to purchase Touch America Services (f.k.a. TeleDistance) from Qwest, Touch America entered into a one-year long Transition Services Agreement ("TSA"), pursuant to which Qwest provides certain back-office and technical support in order to ease the transition of customers. At the conclusion of the TSA, June 30, 2001, Touch America Services will transfer all customers currently served under its carrier identification code ("CIC code") to Touch America. To effect this customer transfer, Touch America will simply change the name on TASI's CIC to Touch America; Touch America will continue to utilize the same CIC as that which is presently used by TASI, only it will do so under the "Touch America" name. At the same time, TASI will transfer its remaining assets to Touch America. Once its subsidiary's assets and customers have been transferred, Touch America will file papers to dissolve Touch America Services. At the conclusion of this restructuring, Touch America will remain as the corporate entity directly serving Arizona customers. However, prior to transferring the assets and customers of its subsidiary, Touch America requires a CC&N to operate in Arizona in the same capacity as its

subsidiary currently does. Hence, Touch America has petitioned the Corporation Commission to transfer Touch America Services' CC&N prior to approving the assignment of assets.

Also, because customers subscribed to Touch America Services will, technically, have their preferred interexchange carrier changed if the Commission approves the aforementioned Application, Touch America also asks the Commission to either forbear or waive A.R.S. § 44-1572.

Finally, following the Commission's grant of authority to transfer its CC&N and assign assets to Touch America, and upon the assignment of assets on the FCC-mandated date of June 30, 2001, Touch America Services will request that the Commission cancel its CC&N to provide facilities-based interexchange telecommunications services and withdraw its tariff, ACC Tariff No. 1.

II. TOUCH AMERICA AND ITS PARENT CORPORATIONS

Touch America is a Montana corporation with its principal office and place of business located at 130 N. Main Street, Butte, Montana 59701. Customers of Touch America may reach the company by a toll free call to 1-800-823-4664. Touch America is a wholly owned subsidiary of Entech, Inc., a Montana corporation, which in turn is a wholly owned subsidiary of The Montana Power Company ("Montana Power"), also a Montana corporation. Montana Power has its principal office and place of business at 40 E. Broadway, Butte, Montana 59701. Entech, Inc. has its principal office and place of business at 16 East Granite, Butte, Montana 59701. The stock of Montana Power is publicly traded on the New York Stock Exchange under the symbol "MTP."

Touch America is Montana Power's telecommunications subsidiary and the focus of its growth strategy in broadband fiber-optic and wireless spectrum applications. Touch America is the

owner, operator and developer of an 18,000-mile, state-of-the-art, high-speed, fiber-optic network that is scheduled to have more than 26,000 miles of fiber by year end 2001. Touch America, through its fiber-optic network and its expanding alliances, offers high-speed access to the Internet, a full-line of long distance services, as well as dedicated voice, data, video, ATM and frame relay solutions.

In addition to the telecommunications activities of its subsidiary Touch America, Montana Power and its other subsidiaries purchase, transmit and distribute electricity; purchase, transport and distribute natural gas; and conduct non-utility operations involving the mining and sale of coal and lignite, exploration for and development, production, processing and sale of oil and natural gas (as well as trading and marketing of natural gas) and development, investment in, and operation of independent power projects and other energy-related businesses. Montana Power was incorporated in 1961 under the laws of the State of Montana as the successor to a corporation formed in 1912.

On April 28, 2000, Montana Power's Board of Directors voted to divest its energy businesses and become a stand-alone company focused entirely on telecommunications using its telecommunications subsidiary's name, Touch America. Since then, Montana Power has progressed with divestiture by selling certain energy assets. The ongoing corporate reorganization is pro forma and will not affect Arizona consumers.

Touch America Services participates in the highly competitive telecommunications market in Arizona. It competes directly with numerous competitive interexchange carriers, such as AT&T and MCI WORLDCOM. As a competitive carrier, Touch America does not have a guaranteed revenue base, a guaranteed rate of return on its investment or a guaranteed recovery of its operational expenses.

Bases for Waiver

I. THE EXISTING COMPETITIVE MARKET PRECLUDES CROSS-SUBSIDIZING OR COMMINGLING THAT WOULD HARM ARIZONA CONSUMERS

Under the Rules, TAS1 is required to supply the Commission with voluminous information concerning corporate diversification plans, transactions between regulated and unregulated affiliates, and assessments of affiliate corporate structure including this pro forma transfer. Touch America Services asserts that given the competitive nature of the interexchange telecommunications market in Arizona, the application of these requirements to Touch America Services is both unnecessary and unreasonably burdensome, particularly in the instant scenario.

Because of market forces in effect in Arizona, Touch America has no incentive (or ability) to charge unduly high or above-market prices that could be used to fund or subsidize unregulated affiliates or to commingle utility and non-utility funds in a manner that is harmful to Arizona consumers. Touch America's contractual or affiliate relationships play no discernable role in the pricing of telecommunications services to customers. Rather, prices are set by competition. First, the competitive rates of dominant carriers such as AT&T, Sprint, and MCI WORLDCOM set a limit on the rates Touch America can offer. Second, with every product pricing change initiated by Touch America, particularly in the business service area, competitors inevitably introduce new service packages or reprice their services in a manner believed to be even more attractive to the consumer. Accordingly, traditional indices, such as achievement of an established revenue requirement, play no role in determining Touch America's prices. Arizona consumers are protected from abusive pricing practices through the competitive market. Applying the Rules to Touch America would only result in costly and burdensome micro-

regulation with no concomitant additional protection for Arizona consumers.

II. APPLYING THE RULES TO TOUCH AMERICA WOULD BE UNNECESSARILY COSTLY AND BURDENSOME

On their face, the Rules require prior Commission review, evaluation, and approval of public utility non-regulated business activities. These measures are imposed, presumably, to deter any potentially negative impact on Arizona ratepayers resulting from such activities. Touch America acknowledges that such regulations are quite appropriate in the context of utilities whose revenue in large part results from the provision of intrastate monopoly utility services. Monopoly service revenues might improperly capitalize the non-regulated affiliate business activities of such utilities, with utility ratepayers both potentially bearing the risk of failure and paying higher rates than necessary for monopoly service. Such activities would unjustly burden consumers of these utility services. Under such circumstances, Commission actions taken to monitor non-regulated utility activities are prudent and clearly serve to further the public interest.

However, in instances where a public utility engages in a competitive market, holding non-monopoly power, with its revenues from and investment in Arizona comprising only a small portion of its total corporate family revenues and investment, application of the Rules is unnecessary. Touch America's Arizona revenues and capital investment comprise a small percentage of Touch America Services' total corporate revenues and capital investment. The vast majority of affiliate transactions are national or pertain exclusively to interests in other states, and, therefore, have little, if any, impact on Arizona. Without a waiver, Touch America Services and its numerous subsidiaries would come under the purview of Rule 803, requiring

notice to the Commission every time one of those entities undertook an activity that falls within Rule 801(5)'s broad definition of "reorganize." That requirement would create an enormous burden on Touch America Services and its parent companies and related subsidiaries. Moreover, under Rule 805, Touch America Services would have to submit reams of information wholly irrelevant to Arizona on an annual basis.

The risk to Arizona consumers from Touch America Services affiliate interests or transactions is remote at best and compliance with the Rules would be unduly burdensome. No public purpose would be served by having Touch America Services (and its parents and affiliates) provide documentation concerning every affiliate transaction encompassed by the Rules when those transactions have no bearing on Arizona. Such a requirement simply constitutes micro-regulation and would cause needless expense and unnecessary administrative burdens for Touch America and the Corporation Commission. Indeed, application of the Rules is particularly unnecessary and unreasonable given the Commission's other existing regulatory authority over competitive telecommunications providers such as Touch America Services.

RELIEF REQUESTED

A. Waiver

Touch America Services believes that a complete waiver of the Rules is appropriate. The Commission has had several years to determine whether the partial waivers granted to other competitive interexchange telecommunications companies, such as AT&T (Decision No. 58258) or MCI (Decision No. 58257) have provided any significant regulatory benefits. If not, a complete waiver of the Rules would be appropriate here because the burden of partial compliance outweighs the lack of public benefit.

Alternatively, Touch America Services requests a partial waiver of the Rules as follows:

1. Touch America and its parent and affiliates be required to file a notice of intent to organize or reorganize a public utility holding company under A.A.C. R14-2-803 only for those organization or reorganizations that are likely to have a material adverse impact on Touch America Services.
2. No cumulative threshold or "exempt" amount, such as those adopted by Decision No. 58063, apply to any organization or reorganization planned by Touch America Services its parent and affiliates that would have a material adverse impact on the Arizona jurisdiction.
3. With respect to A.A.C. R14-2-804(B)(1), which requires a utility to obtain Commission approval before obtaining a financial interest, or guaranteeing, or assuming the liabilities of an unregulated affiliate, Touch America Services and its parent and affiliates be required to seek prior approval under R14-2-804(B)(1) only for transactions which are likely to have a material adverse effect on Arizona operations.
4. Likewise, with respect to A.A.C.R14-2-804(B)(3) which requires a utility to obtain Commission approval before using utility funds to form a subsidiary or divest itself of an established subsidiary, Touch America Services and its parent and affiliates be required to seek prior approval under R-14-2-804(B)(3) only for transactions which are likely to have a material adverse effect on Arizona operations.
5. Waiver of all other requirements of A.A.C. R14-2-804, including that

TASI need not report on loans, evidences of indebtedness, and all other transactions that occur between and among Touch America Services and its parents and affiliates in the ordinary course of business, and which would otherwise fall under R14-2-804.

6. Waiver of the annual reporting requirements in A.A.C. R14-2-805, because the above modifications to A.A.C. R14-2-803 and -804 should be sufficient to capture and expose affiliated transactions which are likely to have a material adverse effect on the Arizona jurisdictional operations.

B. Expedited Treatment of Application and Stay of the Rules

Given the filing date required by the Rules, Touch America Services requests expedited consideration of this Application so that Touch America Services need not devote resources to preparing for a hearing that may be unnecessary. Touch America also requests that the Rules be stayed during the period that is necessary for the Commission to rule on this application and that the Commission's order on this application be issued *nunc pro tunc*, if necessary, retroactive to the date on which the Rules became applicable to Touch America Services.

CONCLUSION

For the foregoing reasons, Touch America Services respectfully requests that the Commission grant a permanent general waiver of the Rules or, in the alternative, a partial waiver as set forth above.

May 31, 2001

Respectfully submitted,

By _____
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